

**FINAL TEXT OF AMENDMENTS TO TITLE 8, DIVISION 2,
SECTIONS 20299 AND 20390
ADOPTED BY THE AGRICULTURAL LABOR RELATIONS BOARD
ON MARCH 3, 2004**

§ 20299. Agricultural Employee Relief Fund

(a) This subsection shall apply to all cases in which the Board has ordered monetary relief for agricultural employees or has issued an order approving a settlement agreement providing for payment of monies to agricultural employees, where the collection of monies pursuant to such orders or settlement agreements occurred on or after January 1, 2002. In addition, this subsection shall apply where the collection of monies occurred prior to January 1, 2002 if the monies were not subject to an enforceable promise to return them to the employer and had not escheated to the State by operation of law as of January 1, 2002.

(1) Where, despite diligent efforts, the Board has been unable to locate employees or any person(s) legally entitled to collect money on their behalf for a period of two years after the date the Board collected monies on behalf of such employees, those monies shall be deposited in a special fund in the State Treasury that shall be named the Agricultural Employee Relief Fund (Fund).

(2) Provisions requiring that monies collected on behalf of employees who are not located within two years after the date of collection be deposited in the Fund may be included, pursuant to the mutual agreement of the Regional Director and the employer, in informal settlement agreements reached in accordance with section 20298.

(b) When a regional director has good cause to believe that the collection of the full amount of monetary relief previously ordered by the Board is not possible after reasonable efforts have been made to collect the balance from the employer, the regional director shall file a motion seeking a finding by the Board that the case is eligible for pay out from the Fund. In the case of formal settlement agreements, as defined in section 20298, where there has been a prior adjudication by the Board of the amounts owing, such adjudication shall define the full amount of monetary relief owing to employees. Where there has not been a prior adjudication of the amount owing to employees, the full amount owing to employees shall be the amount specified in the formal settlement agreement. The motion shall be filed with the Board and served on the parties to the case in accordance with sections 20160 and 20166, and shall be accompanied by a statement describing the collection efforts made to date and the basis for the regional director's belief that collection of the full amount owing is not possible.

Any party to the case may file a response within ten (10) days of service of the motion. If the Board grants the motion, the case shall become eligible for pay out from the Fund, in accordance with the provisions below.

(1) Within ninety days after the end of each fiscal year, the Board shall determine the amounts to be paid to eligible employees and shall begin distribution of those amounts.

(2) Employees eligible for pay out from the Fund shall be those entitled to monetary relief pursuant to orders in cases in which the Board has made the Fund eligibility finding specified in subsection (b) above. Such employees shall be included in the next annual determination referred to in subsection (b)(1). Eligibility shall continue for five successive annual determinations. Thereafter, eligibility for pay out from the Fund shall expire. In no event shall an employee be paid an amount from the Fund exceeding the amount owed but not collected from his or her employer.

(3) The amount to be distributed to each employee eligible for pay out shall be calculated as follows. The total amount of unallocated money in the Fund shall be divided by the aggregated total of the amounts owing to eligible employees. The resulting ratio shall be multiplied by the amount owing to each eligible employee to determine the amount to be distributed to each eligible employee. However, if the ratio is greater than one, it shall be deemed to be one for the purpose of calculating the amounts to be distributed and any monies in excess of the amounts necessary for distribution shall remain in the Fund for future distributions. For the purpose of the above calculation, the “amount owing to each eligible employee” shall not include any amounts allocated to the employee in previous fiscal years.

(4) Notwithstanding subsection (3) above, no amount less than one dollar shall be allocated or distributed to any employee.

(5) Where money from the Fund cannot be distributed because the employee to whom it is assigned cannot be located and/or does not claim the money, the money shall be held in the Fund for distribution to that employee until one year has elapsed from the expiration of eligibility for distribution from the Fund, at which time the claim shall be extinguished and the money shall revert to the Fund for use in making payments to other eligible employees. However, where a claimant can demonstrate that extraordinary circumstances prevented distribution or receipt of monies owing prior to the time that the claim was extinguished, the Board may approve payment of the claim.

(c) The provisions of subsection (b) shall be applied to every distribution from the Fund, unless the Board, within ten (10) days of the determination referred to in subsection (b)(1), finds that application of those provisions will result in manifest injustice. In the event of such a finding, the Board may alter the distribution in order to avoid such injustice.

(d) A motion to make a case eligible for pay out from the Fund pursuant to subsection (b) of this section shall be deemed to include a simultaneous motion to close pursuant to *John V. Borchard, et al.* (2001) 27 ALRB No. 1. In such event, the filing requirements set forth in this section shall be controlling. In the event that a closed case is later reopened pursuant to the criteria set forth in *John V. Borchard, et al.* (2001) 27 ALRB No. 1 and further collection of monies from the employer is effectuated, the Fund shall be reimbursed to the extent that the combination of the amount collected from the employer and the amount paid from the Fund exceeds the full amount owed to employees in that case.

Authority: Section 1144, Labor Code

Reference: Section 1161, Labor Code

~~§20390. Petitions Filed Pursuant to Labor Code Section 1156.7(c) and (d)—Decertification Petition and Rival Union Petitions.~~

(a) Where the incumbent union presently has a collective bargaining agreement with the employer, the petition shall contain an allegation that the agreement will expire within the next twelve months or has been in existence for more than three years, and shall be accompanied by evidence of support by 30% or more of the employees currently employed in the bargaining unit.

(b) Where the incumbent union presently does not have a collective bargaining agreement with the employer, the petition shall contain an allegation to that effect, and shall be accompanied by evidence of support by a majority of the employees currently employed in the bargaining unit.

(c) The evidence of support for the petition may be in the form of signatures on a petition or, in the case of a rival union petition, on authorization cards or on a petition. In either case, each signature must be dated.

(ad) All petitions for decertification under Labor Code Section 1156.7(c) or and a rival union petitions for certification under Labor Code Section 1156.7(d) shall contain the following:

(1) The name, address, and phone number of the petitioner and its affiliation, if any.

(2) The name, address, and phone number of a representative of the petitioner authorized to make agreements with the Board and the parties and to accept service of papers.

- (3) The name and address of the incumbent union.
- (4) The name, location, and mailing address of the employer.
- (5) The nature of the employer's agricultural commodity or commodities encompassed by the unit.
- (6) A description of the existing bargaining unit.
- (7) The approximate number of employees currently employed in the bargaining unit.
- (8) A statement whether a strike is in progress in the unit involved and, if so, the approximate number of employees participating and the date the strike began.
- (9) A statement of which languages, other than English and Spanish, the petitioner requests be included on the ballots, and the approximate number of employees requiring such ballots.
- (10) An allegation that the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.
- (11) An allegation that no valid election has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing of the petition.
- (12) An allegation that the Board did not certify the incumbent union within the 12 months immediately preceding the filing of the petition.
- ~~(3) An allegation that a labor organization, certified for the bargaining unit specified in the petition or for an appropriate unit, has a collective bargaining agreement with the employer which would otherwise bar the holding of an election and that this agreement will expire within the next 12 months.~~
- ~~(4) The information set forth in section 20305(a).~~
- ~~(b) A petition for decertification filed pursuant to Labor Code Section 1156.7(c) shall be signed by or accompanied by a petition signed by at least 30 percent of the agricultural employees in the bargaining unit requesting that such labor organization be decertified. A petition for certification filed pursuant to Labor Code Section 1156.7(d) shall be signed by or accompanied by authorization cards or a petition signed by a majority of the employees in the appropriate bargaining unit. Each signature on either the petition or on an authorization card must be dated.~~
- (e) The procedures set forth in Chapter 3 of these regulations for the service and processing of petitions for certification, election procedures, and post-election procedures shall be applicable to decertification and rival union petitions filed pursuant to Labor Code Section 1156.7(c) and (d), except that service of the petition also shall be made upon an officer or director of the incumbent union, or upon an agent of the union authorized to receive service of papers. If service is made by delivering a copy of the petition to anyone other than an officer, director, or agent of the union authorized to receive service of papers of

the employer, the petitioner shall immediately send a telegram or facsimile transmission to the officer, director, or agent of the union declaring that a petition is being filed and stating the name and location of the person actually served and shall file with the regional office proof that the telegram or facsimile transmission was sent and received.

Authority: Section 1144, Labor Code

Reference: Sections 1156.3 and 1156.7(c) and (d); *Montebello Rose Co.* (1981) 119 Cal.App.3d 1; *Cattle Valley Farms* (1982) 8 ALRB No. 24.